

Under section 3 (c) of the said Act, the Lieutenant-Governor, Puducherry appoints the Deputy Collector (Revenue)-*cum*-Land Acquisition Officer, Mahe to perform the functions of Collector under section 5-A of the said Act.

SCHEDULE

Sub-taluk : Mahe

Village : Palloor.

Sl. No.	Re-survey No.	Nature of land	Name of the land-owner/ interested person	Extent to be acquired
(1)	(2)	(3)	(4)	(5)
1	36/7B	RG	Thiru Eandullathil Mammed, S/o. Poovanammal Abdulla, 10/306, Meethaleparambath, P. O. Chokli. (Registered holder/Present owner/enjoyer)	H. 0 A. 01 Ca. 44

(By order of the Lieutenant-Governor)

G. RAGESH CHANDRA,
Special Secretary to Government.

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Thursday, the 24th day of December 2009.

I.D. No. 23/2007

The President,
Puduvai Kooturavu
Noorpalai Thozhilalar Sangam . . . Petitioner.

Versus

The Managing Director,
The Pondicherry Co-operative
Spinning Mills Limited . . . Respondent

This industrial dispute coming on 23-12-2009 for final hearing before me in the presence of Thiru Durai Arumugam, appearing for the petitioner, Thiru T.S. Suresh, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.91/2007/Lab./AIL, dated 20-2-2007 for adjudication of the following industrial dispute that arose between the management of The Pondicherry Co-operative Spinning Mills Limited, Pondicherry and its workman Thiru N. Velumani over his non-employment:

(a) Whether the dispute raised by Puduvai Kootturavu Noorpalai Thozhilalar Sangam against the management of M/s. Pondicherry Co-operative Spinning Mills Limited, P-396 (SPINCO) over transfer from the existing department to another department of the mill and suspension of Thiru P.A.N. Velumani is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

Initially, the petitioner workman by name N. Velumani was appointed as Reeler in the year 1988. Due to his heart ailment, as requested by him, he was posted in Cone Winding Department as Cleaning Gang for the past ten years. Due to political pressure, the respondent company has transferred the said Velumani to Preparatory Section. Due to the said transfer, his seniority is affected and thereby leading to affect his promotion in future. Aggrieved by the said transfer the petitioner workman Velumani had presented his grievance representation before the Conciliation Officer, who took up the matter for enquiry *vide* No.2645/05 LO@/AIL. When the matter was pending before the Conciliation Officer, the respondent company suspended the said workman on 4-2-2006. Hence, the said Velumani filed a Writ Petition before the Hon'ble High Court, Madras and the Hon'ble High Court disposed the said Writ Petition by giving direction to the Conciliation Officer that the Conciliation Proceedings should be completed within a period of four months from the date of receipt of the order and that the petitioner be permitted to continue in the same Cone Winding Department. But the respondent company failed to obey the order of the Hon'ble High Court, which would amount to contempt of court. In the mean time, the Conciliation Officer gave a failure report. Then the respondent company had directed the petitioner to report for work in Cleaning Gang Preparatory Section and stopped 75% of subsistence allowance. The version of the respondent that there is no Cone Winding Section now and hence there is no vacant place in the said section is not correct. The Cone Winding Section is now modernised and the respondent company has engaged daily one person in the said place and is getting work. Hence, he prays this Tribunal to *set aside* the transfer order of the said Velumani and permit him to continue to work in the Cone Winding Section with fullback wages and other benefits.

3. In the counter statement filed by the respondent it is contended that it is true that P.A.N. Velumani was initially appointed on 22-1-1986 and subsequently removed and admitted as a fresh new entrant on 13-4-1988. Then on 1-1-1992 he was regularised as Reeler *vide* Mill Proceeding dated

29-1-1992. As he made a representation pointing out his heart ailment to post him in light work category, he was posted as light work category *vide* Office Order dated 14-3-2005 as Cleaning Gang from 1-3-2005 and re-fixing his wages. Earlier, he was allowed to work in Cone Winding Department in the day shift on humanitarian ground considering his health. As his category of work is cleaning gang, he was orally directed to report for work in the Cleaning Gang preparatory section from 5-12-2005, which is equal work, he refused to obey the order.

The petitioner raised the matter before the Labour Officer (Conciliation) through petitioner Trade Union. While the conciliation was pending, the petitioner filed two writ petitions No. 3852 and 3909 of 2006 challenging the order of transfer. Both writs were disposed on 28-7-2006 with direction to Labour Officer (Conciliation) to complete the conciliation proceedings and to take a decision one way or other within a period of four months from the date of receipt of the copy of the order.

The management on 10-4-2007 directed the petitioner to report for duty or otherwise his absence will be treated as "absence without prior permission". The petitioner did not obey the order, but insisted to allow him to work in Cone Winding Department. He was given all suspension benefits till 10-4-2007. Hence, he prays for dismissal of the petition.

4. During enquiry, on the side of the petitioner Exs. A1 to Ex. A4 were marked. On the side of the respondent, no oral or documentary evidence was adduced.

5. *The point for determination is:*

Whether the transfer of N. Velumani from existing department to Preparatory Section and his suspension is justified or not?

6. *On the point:*

The main contention of the petitioner is that the petitioner workman Velumani was appointed as Reeler in the respondent company and due to his heart ailment, as requested by him, he was posted to Cone Winding Department as Cleaning Gang and due to political pressure, the respondent company has transferred him to Preparatory Section and due to the said transfer, his seniority is affected.

7. The contention of the respondent is that earlier the said Velumani was allowed to work in Cone Winding Department in the day shift on humanitarian ground considering his health and as his category of work is Cleaning Gang, he was orally directed to report for work in the Cleaning Gang Preparatory Section from 5-12-2005, which is equal work, and that he refused to obey the order.

8. Heard both sides. Perused the records. On perusal of records, it is seen that the petitioner was initially appointed as Reeler on 22-1-1986 and subsequently, he was posted to Cone Winding Department as Cleaning Gang for the past ten years. The said facts are admitted by both parties.

9. The petitioner during his arguments, has submitted that due to political pressure, the said workman Velumani has been transferred to Preparatory Section, though the respondent was aware of the fact that the said Velumani had been suffering from heart disease. Though on the side of the petitioner, no medical certificate was produced to prove that the said Velumani is suffering from heart disease, the respondent has not denied about the same. In fact as the said workman made a representation before the respondent company pointing out his heart ailment and to post him under light work category, he was posted for light category work *vide* Office Order, dated 14-3-2005 as Cleaning Gang from 1-3-2005 as admitted by the respondent in his counter. Hence, it is proved that the petitioner is suffering from heart disease. In such circumstances, the respondent company, on humanitarian grounds should have considered the request of the said Velumani and retransferred him to the post of Cleaning Gang. But the respondent company failed to do so. Apart from that, while the enquiry proceedings was pending before the Conciliation Officer, the respondent company issued an order, dated 4-2-2006, suspending the said Velumani from service, as evident from Ex.A2 suspension order.

10. It is further case of the petitioner that objecting to the act of the respondent company, the said Velumani filed writ petition Nos.3852 and 3969 and WPMP No.4109 and 4158 of 2006 and the said petitions were disposed by the Hon'ble High Court, Madras on 28-7-2006, directing the Conciliation Officer to complete the enquiry proceedings within

four months from the date of receipt of the order and also issued a direction that the petitioner (Velumani) be permitted to continue in the same Cone Winding Department. The relevant portion of the said order is as follows:-

"In view of the above order, the petitioner herein is permitted to continue in the same Cone Winding Department.

With the above observations, these writ petitions are disposed of No costs.

Eventhough the copy of the said order has been marked to the respondent company, till date they have not complied with the direction of the Hon'ble High Court, Madras to permit the petitioner to continue in the same Cone Winding Department, which would amount to contempt of court.

11. The petitioner has further stated that the respondent company issued a suspension order on 4-2-2006 to the said Velumani and after that the said Velumani was directed to report for work in Preparatory Section and stopped 75% of Subsistence Allowance from 25-3-2007, which he got during the period of suspension. But in the counter, the respondent has stated that the said Velumani was given all suspension benefits till 10-4-2007. Though the respondent has filed his counter statement, no witness was examined nor was any document marked on their side to prove their case.

12. Perused the Ex.A2 Suspension Order. I find that the petitioner workman Velumani had been suspended by issue of suspension order, dated 4-2-2006. The reason attributed for suspension as contained in Ex.A2 is that the said Velumani did not work in Unit I Preparatory Section, in spite of transfer order posting in Unit I Preparatory Section and on the contrary continued to work in the Cone Winding Section and for that reason alone, he was suspended. When it is a specific case of the petitioner that by way of requesting before the management, citing health ground that he should be permitted in the Cone Winding Section, in which section he was transferred and posted originally, in utter this regard to his health condition, the management transferred him to Unit I Preparatory Section *suo motu*. When a transfer order is effected, it should be in the interest of the management as well as the employee particularly

when his health condition had been made known to the management. Further the said Velumani has raised dispute regarding his transfer to Preparatory Section from Cone Winding Section and when there is pendency of conciliation proceedings before the Conciliation Officer, it is unfair and unjustified and lacking in humanitarian consideration on the part of the management to have transferred the said workman to Preparatory Section despite his health condition. Human life is precious and loss of human life cannot be compensated in terms of any benefit. These two points had been totally forgotten by the management before having ventured to transfer the said workman from Cone Winding Section to Preparatory Section and suspending him from service. This court holds that the suspension is unwarranted particularly when there is pendency of conciliation proceedings. Therefore, the suspension is held to be unjustified. Since the suspension is held to be unjustified, the petitioner is entitled for full wages at the same rate as he was paid prior to or on the date of suspension. The respondent shall calculate the wages payable to the petitioner and shall pay him from 4-2-2006 *i.e.* from the date of suspension till reinstatement with all attendant benefits like grant of increment, seniority, promotion etc., without denial of any of the benefits that accrued to him legally.

13. It is pertinent to note that this case was posted for filing the counter by the respondent on 19-7-2007. But in spite of several opportunities given, the learned counsel for the respondent has not filed the counter statement and the same was filed only on 8-7-2009 *i.e.* after two years. This would clearly prove that the respondent has not shown any interest in contesting the case. When the employee/petitioner workman raised the industrial dispute, objecting to the act of the management/respondent, it is the duty of the respondent to come and give evidence before this Labour Court by filing necessary documents to prove that their act is legal. In this case, the respondent has simply filed a counter, that too, after two years and failed to appear before this court to give the evidence.

14. This is the attitude of the respondent. However, this court makes it clear that the decision of this court that the suspension of the petitioner is unjustified and that the petitioner shall continue in Cone

Winding Section with all benefits of back wages is not arrived at by the attitude of the respondent in protracting the proceedings by not filing the counter in time or it attempts to harass the petitioner.

15. In the result, the industrial dispute is allowed and the award is passed to the effect that the transfer order of the petitioner worker by name N. Velumani from Cone Winding Department to Preparatory Section is illegal and therefore it is hereby *set aside*. The respondent company/management is hereby directed to permit the said N. Velumani to continue in the Cone Winding Department. Further the respondent is hereby directed to calculate the wages payable to the petitioner and shall pay him from 4-2-2006 *i.e.* from the date of suspension till reinstatement with all attendant benefits like grant of increment, seniority, promotion etc., without denial of any of the benefits that accrued to him legally.

Typed to my dictation, corrected and pronounced by me in the open court on this the 24th day of December, 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner : Nil

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner:

- Ex.A1— Copy of the letter dated 7-12-2005 sent by Labour Office to the petitioner Union.
- Ex.A2— Copy of the suspension order, dated 4-2-2006.
- Ex.A3— Copy of the judgment by Hon'ble High Court dated 28-7-2006.
- Ex.A4— Standing orders for the workers of SPINCO.

List of exhibits marked for the respondent: Nil

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.